

1 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
2 REGION 10  
3 1200 Sixth Avenue, Ste 900  
4 Seattle, Washington 98101

5 IN THE MATTER OF: ) Docket No. CWA-10-2010-0146  
6 )  
7 Simplot Livestock Company, Inc. )  
8 Grand View, Idaho ) **COMPLIANCE ORDER**  
9 )  
10 Respondent )  
11

12 **STATUTORY AUTHORITY**

13 1. The following FINDINGS AND CONCLUSIONS are made and ORDER issued  
14 pursuant to the authority vested in the Administrator of the United States Environmental  
15 Protection Agency ("EPA") by Section 309(a) of the Clean Water Act ("Act"), 33 U.S.C.  
16 § 1319(a). This authority has been delegated to the Regional Administrator for EPA Region 10  
17 and has been redelegated to the Director of the Office of Compliance and Enforcement.

18 **FINDINGS**

19 2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the "discharge of a  
20 pollutant" by any person, except, *inter alia*, as authorized by a National Pollutant Discharge  
21 Elimination System ("NPDES") permit issued pursuant to 402 of the Act, 33 U.S.C. § 1342.  
22 Section 504(12) of the Clean Water Act, 33 U.S.C. § 1362(12), defines the term "discharge of a  
23 pollutant" to include "any addition of any pollutant to navigable waters from any point source."

24 3. Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides that the Administrator  
25 may issue a compliance order when the Administrator finds that a person is in violation of

1 Section 301 of the Act, 33 U.S.C. § 1311, or of any permit condition that implements various  
2 sections of the Act.

3 4. Simplot Livestock Company, Inc. ("Respondent") operates a feedlot at  
4 1301 Hwy. 67 in Grand View, Idaho, ("Facility"). Respondent is a "person" within the meaning  
5 of Section 502(5) of the Act, 33 U.S.C. §1362(5).

6 5. Respondent's Facility confines more than 49,000 cattle and is a Concentrated  
7 Animal Feeding Operation.

8 6. NPDES Permit Number IDG010026 ("Permit") was issued to Respondent and  
9 became effective on April 3, 1997. The Permit was administratively extended on  
10 January 7, 2002. The Permit specifies the conditions under which Respondent is authorized to  
11 discharge process wastewater under Part II.A.

12 7. On February 4, 2009, EPA issued to Respondent an Information Request pursuant  
13 to Section 308 of the Act. On March 19, 2009, Respondent submitted its response. In its  
14 response, Respondent described its "constant flow stock watering system." During the winter  
15 months, this system diverts a portion of the overflow from the stock watering system into  
16 irrigation ditches that flow to the Snake River. The other portion of the overflow flows from the  
17 Facility into the Trueblood Wildlife Refuge, a wetland area adjacent to the Snake River.

18 8. In Respondent's response to the Information Request, Respondent provided  
19 Laboratory Analysis Reports containing an analysis of the overflow from the stock watering  
20 system. The Reports showed that samples taken in December 2008 and February 2009 contained  
21 coliform bacteria in concentrations of 1600 MPN/100mL.

22 9. On March 12, 2009, EPA performed an NPDES inspection of the Facility. At the  
23 time of the inspection, inspectors saw overflow from the stock watering system and discussed the  
24 routing of the system's overflow with Respondent's Environmental Manager.

10. Respondent's stock watering system overflow is "process wastewater" as that term is defined in the Permit.

11. Sections II. A. and C. of the Permit prohibit process wastewater to be discharged directly to waters of the United States.

12. The irrigation canals, the wetlands at the Trueblood Wildlife Refuge, and the Snake River into which they flow are waters of the United States.

13. The stock watering system overflow discharges at Respondent's Facility are not authorized by any permit issued pursuant to the Act, and Respondent is therefore in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

## COMPLIANCE ORDER

14. Based upon the foregoing FINDINGS and pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), it is hereby ORDERED as follows:

15. Respondent shall immediately cease all unpermitted discharges to the irrigation canals, the Snake River, and its adjacent wetlands. Respondent shall not discharge to waters of the United States except as authorized by and in compliance with the Permit.

16. In the event Respondent is unable to comply with the requirements of this ORDER, Respondent shall, within ten days of becoming aware of such inability, provide the following:

- a. A summary of the specific reasons why Respondent is unable to comply with the requirement;
- b. A summary of all actions taken by Respondent or others that Respondent alleges demonstrate good faith efforts to comply with the requirement; and
- c. The expected date and required activities by which Respondent will comply with the requirement.

1 17. Submittals for this ORDER shall be submitted to:

2 U.S. Environmental Protection Agency  
3 1200 Sixth Avenue, Suite 900, Mailstop: OCE-133  
4 Seattle, WA 98101  
5 Attn: Steven Potokar

6 **SANCTIONS**

7 18. Notice is hereby given that violation of, or failure to comply with, any of the  
8 provisions of the foregoing ORDER may subject Respondent to (1) civil penalties of up to  
9 \$37,500 per day of violation pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d); (2)  
10 administrative penalties of up to \$16,000 per day for each violation, pursuant to Section 309(g)  
11 of the Act, 33 U.S.C. § 1319(g); or (3) civil action in federal court for injunctive relief pursuant  
12 to Section 309(b) of the Act, 33 U.S.C. § 1319(b).

13 19. Nothing in this ORDER shall be construed to relieve Respondent of the  
14 requirements to fully comply with other applicable federal, state, or local laws and requirements.  
15 EPA reserves the right to take enforcement action as authorized by law for any violation of this  
16 ORDER, and for any future or past violations of the Permit or any other applicable legal  
17 requirements.

18 Dated this 11th day of June, 2010.

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22 Edward Kowalski, Director  
23 Office of Compliance and Enforcement  
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